

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

ENTERED ON DOCKET  
9/27/2006

IN RE:	:	
SHANNON D. DOWNEY and	:	CHAPTER 13
JOHN M. DOWNEY,	:	BANKRUPTCY CASE
	:	NO. 05-44526-PWB
Debtors.	:	
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SHANNON D. DOWNEY and	:	
JOHN M. DOWNEY,	:	JUDGE BONAPFEL
	:	
Movants,	:	
	:	
v.	:	
	:	
STATE OF GEORGIA,	:	
DEPARTMENT OF REVENUE,	:	
	:	
Respondents.	:	

**ORDER WITH REGARD TO PROOF OF CLAIM OF STATE OF GEORGIA**  
**DEPARTMENT OF REVENUE**

The State of Georgia filed a proof of claim in this chapter 13 case<sup>1</sup> for \$39,959.62 for income taxes and related interest and penalties for the years 1988 through 1992. Because the State filed a lien for these taxes on February 9, 2001, in Cobb County, the State asserted that its claim was secured by all of the Debtors' property. The claims are not entitled to priority under 11 U.S.C. § 507(a)(8).

The Debtors' schedules reflect that they own otherwise unencumbered personal property with a value of \$4,015 and motor vehicles with a value of \$12,500, which are exempt under O.C.G.A. § 44-13-100(a) and 11 U.S.C. § 522(b). The Debtors also scheduled accounts receivable of \$11,000.

Claiming that its lien attached to all of these assets, the State in an amended proof of claim asserted a secured claim to the extent of their value, \$27,515. The Debtors objected to allowance of any part of the claim as secured.

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<sup>1</sup>The case was filed on October 14, 2005, prior to the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act.

At the hearing on the objection, the Court determined that the accounts receivable were uncollectible and, as such, valueless. The Court directed the parties to file post-hearing briefs with regard to the legal issues, including whether the State's claim is allowable as secured by the motor vehicles even though the State's lien is not noted on their certificates of title. After the hearing, the State amended its proof of claim to assert its claim as secured in the amount of \$11,000 and unsecured for the balance of \$28,959.62.

The State supports the effectiveness of its lien on the motor vehicles under O.C.G.A. § 48-2-56(a), which provides that "all tax liens shall cover all property in which the taxpayer has any interest from the date the lien arises until such taxes are paid." The Debtors do not argue that the tax lien should be avoided as a lien on the motor vehicles because it was not noted on their certificates of title. The State has not directly addressed the contrary position. Because the question has not been fully argued, the Court declines to rule on this issue.

In their objection as filed, the Debtors sought to avoid the tax lien under 11 U.S.C. § 522(f)(1) because it impaired their exemption in their personal property. But a tax lien is a statutory lien, not a judicial lien that is avoidable under this section. *E.g., In re Houze*, Case No. 99-13307 (Nov. 21, 2003). Thus, the Debtors cannot avoid the tax lien under § 522(f)(1).

The Debtors in their post-hearing brief argue that a claim for taxes for which a lien has been filed is not entitled to allowance as a secured claim because it is a statutory lien and not a security interest or judicial lien. Alternatively, they assert that the tax lien filed in Cobb County is not effective because the Debtors were residents of Paulding County at the time they filed their bankruptcy petition.

The Debtors are correct that a tax lien is a statutory lien, but they are wrong that a claim secured by a statutory lien is not allowable as a secured claim. The Bankruptcy Code defines "lien" as a "charge against or interest in property to secure payment of a debt or performance of an obligation." 11 U.S.C. § 101(37). A statutory lien, like the tax lien here, is simply one form of a lien. 11 U.S.C. § 101(53). "An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property." 11 U.S.C. § 506(a). The Debtors' estate has an interest in the motor vehicles and personal property, and the Debtor cannot exempt those assets from a tax lien, "notice of which is properly filed." 11 U.S.C. § 522(c)(2)(B).

If the tax lien was properly filed, then, the State has a secured claim to the extent of the

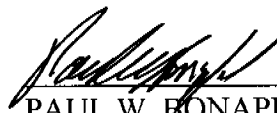
value of the Debtors' assets, which the parties agree is \$11,000 as stated on the State's amended proof of claim. The Debtors' chapter 13 plan must provide for payment of the value of this claim or surrender the assets to the State. 11 U.S.C. § 1325(a)(5).

The Debtors assert that the tax lien is not effective because it was filed in the wrong county. But the Debtors have not established that they did not live in Cobb County when the State filed the lien, nor have they provided any legal authority for the argument that filing in a taxpayer's county of residence is required to effect a proper filing of the lien. The Court, therefore, cannot conclude that the Debtors have overcome the *prima facie* validity of the State's lien claim. FED. R. BANKR. P. 3001(f).

The Debtors have not established a factual or legal basis for disallowing the State's claims for taxes as secured to the extent of \$11,000 and unsecured to the extent of \$28,959.62. The Court will, therefore, overrule the Debtors' objection. Pursuant to its authority in 11 U.S.C. § 502(j) to reconsider allowance or disallowance of a claim for cause, the denial of the Debtors' objection will be without prejudice to the filing of another objection or other proceeding seeking disallowance of the claim or avoidance of the lien based on grounds different than those that this Order rules on or based on a showing of specific facts and legal authority in support of a contention that notice of the tax lien was not properly filed.

It is, therefore, hereby ORDERED and ADJUDGED that the claim of the State of Georgia Department of Revenue be, and it hereby is, ALLOWED as secured in the amount of \$11,000 and as unsecured in the amount of \$28,959.62, without prejudice to the Debtors' rights to seek disallowance of the claim or avoidance of the lien to the extent set forth above.

**IT IS SO ORDERED** this 22 day of September, 2006.



PAUL W. BONAPFEL  
UNITED STATES BANKRUPTCY JUDGE

**DISTRIBUTION LIST**

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